

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FREDDIE FOUNTAIN §
v. § CIVIL ACTION NO. 6:14cv686
BRAD LIVINGSTON §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Freddie Fountain, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the magistrate judge issued a report recommending that the lawsuit be dismissed as frivolous or for failure to state a claim upon which relief may be granted. Fountain did not file objections to the report; instead, he filed a notice of voluntary dismissal.

The Court has reviewed the pleadings and the report of the magistrate judge and has determined that this report is correct. Nonetheless, Fountain's request for voluntary dismissal should be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977) (plaintiff has absolute right to dismiss his complaint under Rule 41(a), Fed. R. Civ. P., prior to the filing of an answer or motion for summary judgment); *Thomas v. Phillips*, 83 Fed.Appx. 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly

ORDERED that the Plaintiff's request for voluntary dismissal of his civil action (docket no. 8) is **GRANTED**. It is further

ORDERED that the above-styled civil action be and hereby is **DISMISSED WITHOUT PREJUDICE** on the request of the Plaintiff. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

SIGNED this 28th day of January, 2015.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

